



Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

- The 2005 Act applies *only* to cases filed *on or after* October 17, 2005. For a significant period of time after that date there will still be cases pending to which most of the amendments and new requirements (including new forms) will *not* apply. For example, reaffirmation procedures and form, discharge provisions and chapter 13 plan and confirmation.
- If a case filed prior to October 17, 2005 later converts or is reopened, the newly converted or reopened case relates back to the original filing date, with limited exceptions. See, 11 USC § 348(a)-(c).



General Order 05-004

- Adopts the Interim Federal Rules to Implement New Requirements.
 - **Amended and New Federal Rules:** 1006, 1007, 1009, 1010, 1011, 1017, 1019, 1020, 1021, 2002, 2003, 2007.1, 2007.2, 2015, 2015.1, 2015.2, 3002, 3003, 3016, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5003, 5008, 5012, 6004, 6011, 8001, 8003, 9006, 9009
- Adopts Amended and New Interim Local Rules to Implement New Requirements.
 - **Amended Interim Local Rules:** 1006-1, 1007-1, 1017-1, 2002-1, 3015-3 and 4008-1
 - **New Interim Local Rules:** 2002-2, 4001-4, 4002-3 and 4004-1



General Order 05-005

■ **Adopts Amended and New Interim Local Forms to Implement New Requirements**

□ **Amended Interim Forms:**

- Form W – Chapter 13 Plan
- Form X – Chapter 13 Confirmation Order
- Form V – Chapter 13 Agreement between Debtor and Counsel

□ **New Interim Forms:**

- Form D – Expense Information for Fee Waiver Appl.
- Form G.1/G.2 – Request for Tax Returns
- Form H.1/H.2 – Motion for Access to Tax Info



Amended and New Official Forms and Director's Forms (Rev. 10/05)

- **Form B1, Voluntary Petition**
- **Form B3A, Application to Pay Filing Fee in Installments**
- **Form B3B, Application for Waiver of Chapter 7 Filing Fee**
- **Form B4, List of Creditors Holding 20 Largest Unsecured Claims**
- **Form B5, Involuntary Petition**
- **Form B6, Cover Sheet**
- **Form B6, Summary of Schedules (includes Statistical Summary of Certain Liabilities)**
- **Form B6A-J, All Schedules (A-J)**
- **Form B6, Declaration Concerning Debtor's Schedules**



Amended and New Official Forms and Director's Forms con't (Rev. 10/05)

- Form B7, Statement of Financial Affairs
- Form B8, Chapter 7 Individual Debtor's Statement of Intention
- Form B10, Proof of Claim
- Form B16A, Caption (Full)
- Form B18, Discharge of Debtor
- Form B19A, Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer
- **Form B19B, Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer**



Amended and New Official Forms and Director's Forms con't, (Rev. 10/05)

- **Form B22A, Statement of Current Monthly Income and Means Test Calculation (Chapter 7)**
- **Form B22B, Statement of Current Monthly Income (Chapter 11)**
- **Form B22C, Statement of Current Monthly Income and Disposable Income Calculation (Chapter 13)**
- **Form B23, Debtor's Certification of Completion of Instructional Course Concerning Financial Management**
- **Form B24, Certification to Court of Appeals**
- **Form B240, Reaffirmation Agreement**



Means Test and Clerk's Notice re: Presumption of Abuse 11 U.S.C. §707(b)

- **New Filing Requirement:**

Individual Debtors under chapters 7, 11 and 13 of the Bankruptcy Code will now be required to complete and file **a new form with financial information on it**. For Chapter 7, this form will determine if a presumption of abuse arises (means test).



New or Amended Official Forms to Implement Requirement

- Three new Official Forms **(by chapter)**:
 - Chapter 7: **Form 22A** - Statement of Current Monthly Income and Means Test Calculation
 - Chapter 11: **Form 22B** - Statement of Current Monthly Income; and
 - Chapter 13: **Form 22C** - Statement of Current Monthly Income and Disposable Income Test Calculation



Amended Interim Local Rule to Implement New Filing Requirements

- **Interim Local Rule 1007-1** (Amended to separate out which documents are due **within two business days** and which are due **within 15 days**)
- **New Documents due within 15 days of Filing:**
 - ☐ Forms 22A, B or C, as applicable;
 - ☐ The Presumption of Abuse checkbox (Chapter 7 cases only);
 - ☐ 60 days of Payment Advices, and
 - ☐ Form 19B re Petition Preparers, if applicable
- **New Document due within 2 Business Days:**
 - ☐ Certificate of Credit Counseling



New Clerk Noticing Requirement

- Clerk is required to provide **notice of whether or not the presumption of abuse arises under Chapter 7 within 10 days of filing.** This notice will be accomplished using the **341 Meeting of Creditors Notice**, which is amended to include a **new section regarding Presumption of Abuse (Forms 9A and 9C).**



New Case Opening and Deficiency Procedure:

- During case opening, clerks will check to determine if the **correct Form 22 (A, B or C, depending on chapter) is filed with the petition**. If not filed with the petition, the 15 Day Notice of Missing Documents form will be issued.
- In addition, if it is a Chapter 7 case, the debtor must also complete the **checkbox at the top of form 22A** indicating whether or not the presumption of abuse arises. If neither checkbox is marked, Form 22A is defective and the 15 Day Notice of Missing Documents form will be issued.



Procedure for Electronically Filed Cases

- If a Chapter 7 petition is filed electronically using the **Case Opening event**, a new drop down box (Means Test Prompt) will appear for the CM/ECF filer to select whether there is a presumption of abuse (Yes, No, Unknown). **This prompt will determine what language is included on the 341 Notice to creditors.**



Procedure for Electronically Filed Cases con't

- If Form 22 is filed **after the initial case opening**, 3 new events are available:
 - Chapter 7 Statement of Current Monthly Income and Means Test Calculation (Form 22A) (event includes the Means Test prompt).
 - Chapter 11 Statement of Current Monthly Income (Form 22B)
 - Chapter 13 Statement of Current Monthly Income and Disposable Income Calculation (Form 22C)
- **Form 22 must be filed separately** (if filed after case opening) using one of these three events **(separately from other missing documents)** in order to answer means test question. If presumption is YES, the event will generate a notice to creditors called Clerk's Notice of Statement of Presumption of Abuse.



New Related Event:

- Motion for Exemption from Means Test
- This exemption motion may be filed **if the debtor is a disabled veteran and the indebtedness occurred primarily during a period during which he or she was: (1) on active duty or (2) performing a homeland defense activity.** New checkbox for this declaration on Means Test Form 22A.



UST TRUSTEE'S PRESUMPTION OF ABUSE

11 U.S.C. §704

■ New UST Trustee Filing Requirement:

The Trustee shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under §707(b), and not later than 5 days after receiving the statement, the court shall provide a copy of the statement to all creditors.



New U.S. Trustee Events:

- Statement and Notice of Presumed Abuse
 - UST Statement of No Determination of Presumed Abuse
 - UST Statement of No Means Testing Documents Filed
 - UST's Motion Declining Dismissal of Case Under §521(i)(4)
 - UST Statement of Change of Presumed Abuse
- Some of these events will be text only events.**



Other New Related Event

- Debtor's Rebuttal of Presumption of Abuse
(under Other)



Amended Interim Federal Rule, New Case Flag and Clerk's Notice

- Interim Federal Rule 2002(f)(10) – requires the clerk to give the debtor, all creditors and trustees notice by mail of: **a statement under §704(b)(1)** as to whether the debtor's case would be presumed to be an abuse under §707(b).
- **§707(b) Public Flag**, will stop entry of discharge
- A new Notice will automatically be generated in CM/ECF upon the UST's filing of the Statement of Presumed Abuse event and mailed to all creditors.



ADDITIONAL NEW FILING REQUIREMENTS

11 U.S.C. §521

■ Other New Debtor Filing Requirements:

There are several new filing requirements for debtors under the 2005 Bankruptcy Act (in addition to the Credit Counseling and Means Test, which are covering separately):

1. Certificate of attorney that notice required by §342(b) was given
2. Copies of payment advices for 60 days before filing
3. Statement of amount of monthly net income-itemized



NEW FILING REQUIREMENTS con't

4. Statement of reasonably anticipated increase in income or expenses over 12 months following the filing.
5. A record of any interest that the debtor has in an education individual retirement account.
6. If a Petition Preparer assisted the debtor with the filing, a new form Notice must be filed by the Petition Preparer (Official Form 19B)

Most of these new requirements have been addressed through amendments to the existing schedules.



New and Amended Official Forms to Implement Requirement

- **Voluntary Petition Form 1** has been amended to include, *inter alia*, the certification by debtor's attorney (Exhibit B on page 2), as well as a checkbox for the credit counseling requirement, and a checkbox for the Filing Fee Waiver, if applicable.
- **Schedule B** has been amended to include a new line item 11 regarding interests in education IRA or qualified state tuition plan.



New and Amended Official Forms con't

- **Schedule I** has been amended to include a line item at the bottom of form to “describe any increase [or decrease] in income anticipated to occur within the year following the filing of this document.”
- **Schedule J** has been amended to include a section itemizing statement of monthly net income and a line item to “describe any increase or decrease in expenditures anticipated to occur within the year following the filing of this document.”
- **Official Form 19B** - Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer



Amended Interim Federal Rules to Implement Requirement:

- **Interim Federal Rule 1007(b)(1)(E) - copies of all payment advices or other evidence of payment**, if any, with all but the last four digits of the debtor's social security number redacted, received by the debtor from an employer within 60 days before the filing of the petition; and
- **Interim Federal Rule 1007(b)(1)(F) - a record of any interest that the debtor has in an account or program of the type specified in §521(c) of the Code. (educational individual retirement account)**



New Electronic Filing Events:

- Notice to Debtor by Non-Attorney
Bankruptcy Petition Preparer (Official Form
19B)
- Employee Income Record (Pay stubs, etc.)



CREDIT COUNSELING

11 U.S.C. §§ 109, 521

■ **New Filing Requirement:**

- An individual may not be a debtor unless they receive **Consumer Credit Counseling** within 180 days before filing from an approved credit counseling service (this applies in all chapters – 7, 11, 12, 13). If filing jointly, both debtors must satisfy this requirement.
- These courses are offered by non-profit agencies that are approved by the UST. A list of approved agencies will be posted at each court's individual website. **(See RI List included in your materials and on court's website).**



2 Possible **Exceptions** to Credit Counseling Requirement

- When the UST declares **suitable services are not available** in a district, or
- When a debtor requests a waiver due to **exceptional circumstances**. The only specific circumstances allowed are the **incapacity or disability of the debtor, or if the debtor is on active military duty in a combat zone.**




Deferral of Credit Counseling

- A debtor may file a **Certificate of Exigent Circumstances** stating that he or she attempted, but was unable to obtain credit counseling within five days from making the request. **A 30 day extension of time may be given to allow the debtor additional time to comply.** Thereafter, the court can grant, for cause, an additional 15 day extension of time.



New and Amended **Official Forms** to Implement Requirement

- The UST Program is developing a **form certificate** for credit counseling agencies to issue debtors, which will then be filed with the court. This certificate should be filed by the debtor with the other official forms and schedules at case filing.
- In addition to the certificate, there is a **checkbox on the Voluntary Petition Form 1, Page 2**, where the debtor indicates if they have received the required credit counseling or if they are seeking a waiver of the requirement.



2 Types of “**Waiver**” Situations under §109(h)(3) and (4)

- If the waiver request is based on **exigent circumstances** pursuant to subsection (h)(3), such as **inability to obtain the counseling within 5 days of making the request**, it is **really an extension of time** request as opposed to a complete waiver of the credit counseling requirement.
- If the waiver is based on an **exemption** pursuant to subsection (h)(4) of §109, it is a **true waiver request based on incapacity, disability or active military duty in a military combat zone.**



Debtor Chooses **Waiver Box** on Petition Form 1

- If the debtor selects the 2nd box, they should also **file either** a **Motion for Exemption from Credit Counseling** or a **Certificate of Exigent Circumstances**.
- If they do not file either of these documents with the petition, **the 2 Business Day Missing Documents Notice** will issue identifying this deficiency.



New Electronic Filing Events to Implement Credit Counseling Requirement

- **Certificate of Credit Counseling** (to be used ONLY when this document is filed AFTER case is already opened). Otherwise certificate can be attached to other documents within Case Opening event.
- **Motion for Exemption from Credit Counseling**
- **Certificate of Exigent Circumstances**
- **Debt Repayment Plan**



Financial Management Course Chapters/Rules/Effective Date

- Financial Management Course (FMC) is required for all individual Chapter 7 and 13 debtors filed on or after October 17, 2005.
- Pertinent Rules:
 - FRBP 1007 (list/schedule/stmt time limits)
 - FRBP 4006 (notice of no discharge)
 - LBR 4004-1 (new – grant/denial of discharge)



Applicable Deadlines

- **In Individual Chapter 7 cases**, the certificate for completing the FMC is **due 45 days after the meeting of creditors.**
- **In Chapter 13 cases**, the certificate is due no later than the **last payment made by the debtor as required by the plan**, or the filing of a Motion for Entry of Discharge under 1328(b)



Exceptions to FMC Requirement

- Debtor is unable to complete course due to incapacity or disability
- Debtor is on active military duty in a combat zone
- US Trustee has determined that adequate financial management services are unavailable in the district

**If one of the above exceptions apply, debtor must file a
Motion for Exemption From Financial Management
Course**



US Trustee Responsibilities

- Compile a list of approved agencies to conduct FMC
- File an objection if FMC taken by debtor was not one of those approved by the US Trustee
- File a position in instances where a debtor's case is reopened for the purpose of submitting their FMC certificate.



Failure to Timely File Form 23

- **Upon expiration of applicable FMC deadline and no certificate is filed:**
 - ☐ Court will Issue Notice of Intent to Close Case Without Entry of Discharge, with a 15 day compliance deadline
- **If no timely compliance within 15 days:**
 - ☐ Court will Close Case Without Entry of Discharge, and notice of such closure will be sent to debtor and all creditors.



Debtor's Recourse – Case Closed Without Entry of Discharge

- Debtor files a Motion to Reopen for purpose of filing a FMC Certificate (copy of certificate as an attachment)
 - If applicable, file a Motion for Exemption
- Receives 13 day objection deadline and deadline for US Trustee position
- Debtor must pay applicable reopening fee



New Electronic Filing Events

- Financial Management Course Certificate
 - Located under “Other”
- Motion for Exemption From Financial Management Course
 - Located under “Motions/Applications”



New Forms

- Certificate of Completion of FMC (Official Form 23)
- Notice of Intent to Close Case (Court Form)
- Notice of Case Closing w/o Entry of Discharge (Court Form)



Application for Waiver of Chapter 7 Filing Fee

- Pursuant to **28 U.S.C. § 1930(f)**, in an individual Chapter 7 case filed on or after 10/17/05, the debtor may file an **Application for Waiver of Chapter 7 Filing Fee** if the court determines that the individual has **income less than 150 percent of the income official poverty line** (defined by OMB) applicable to a family of the size involved and is unable to pay that fee in installments.



Official and Interim Local Forms and Interim Local Rule Changes

- **Official Form 1** – includes a check box for the debtor to indicate that a fee waiver has been requested.
- **Official Form B3B** “Application for Waiver of the Chapter 7 Filing Fee”.
- **Interim Local Form D** – Expense Information – this is a new form which must be filed by the debtor if Schedule J has not been filed with the petition.
- **Interim Local Rule 1006-1** is amended to include the procedure for filing an application to waive the filing fee.



Petitions Filed Without The Required Filing Fee

If the petition is filed without either the filing fee or an Application to Waive the Fee or an Application to Pay in Installments, a **2 Business Day Notice of Missing Documents** will issue requiring the Debtor to do one of the following:

- ☐ Pay the filing fee
- ☐ File a signed Application to Waive Filing Fee (Official Form B3B), or
- ☐ File an Application to Pay in Installments.

See amended Interim Local Rule 1007-1(b)



Defective Application to Waive the Filing Fee

- If an **Application to Waive the Filing Fee** is defective for any reason (i.e. improper signature, wrong form), the Court will automatically enter an order denying the Application and will order that the filing fee be paid in installments. See R.I. Interim Local Rule 1006-1.



Future Fees Arising In Cases Where The Filing Fee Has Been Waived

- The granting of an Application to Waive the Filing Fee applies to all future fees that arise in the case.
- Future fee screens will not appear in cm/ecf.
- The court may vacate an order waiving the filing fee if developments in the case or administration of the estate demonstrate that the waiver was unwarranted.



Conversions

- If the filing fee of an individual chapter 7 debtor is waived and that debtor's case later converts to a case under chapter 13, the debtor must pay the full chapter 13 filing fee.
- The Debtor will be given fifteen (15) days to either pay the fee in full or to file an Application to Pay in Installments (if applicable).



Electronic Filing of New Case with Application to Waive the Fee

- An Attorney filing a new case electronically for a debtor seeking to waive the filing fee, shall proceed as follows:
 - Open the case using the **Case Opening event** (not case upload)
 - **Change the Fee status to “IFP Fee Waived”** on the screen listing type of debtor and other statistical information
 - **File the Application to Waive** (Form 3B) using the event "Application to Waive Chapter 7 filing fee", listed under motions/applications".
 - If the motion is denied, the Debtor will be immediately placed into an installment payment plan and will have 10 days to make their first installment.



Pre Petition Tax Information pursuant to 11 USC § 521(e)

- For all individual Chapter 7 & 13 cases filed on or after October 17, 2005, the Debtor must provide **the Trustee** with their Federal Tax Return for the most recent year **no later than 7 days before the Section 341 Meeting**.
- Debtors may also provide a transcript of the tax return, or a written statement that documentation does not exist.
- Do not file Pre-Petition Tax Information with the Court!



Pre Petition Tax Information Con't

- Creditors/Parties in Interest may also request copies of Debtor's pre-petition tax information and must **make their request directly to the debtor at least 15 days prior to the Section 341 Meeting date**
- Debtor must furnish the requesting party the most recent year for which a return was filed no later than 7 days before the Section 341 Meeting.



Pertinent Interim Federal and Interim Local Rules

- **Interim Federal Rule 4002** -- Debtor's Duties
- **Interim Local Rule 4002-3 (new)** – Federal Tax Returns
- **Interim Local Rule 9004-1** – Personal Identifiers -- The Court is not responsible for redacting any personal identifiers!



Post Petition Tax Information pursuant to 11 USC § 521(f)

- At the **written request** of the Court, US Trustee or Party in Interest, **individual Chapter 7/11/13 Debtors shall:**
 1. File with the Court (simultaneous to filing with the taxing authority), a copy of a Federal Income Tax Return (or transcript) for each tax year ending while the case is pending;



Post Petition Tax Information pursuant to 11 USC § 521(f)

- 2. File (simultaneous to filing with the taxing authority), a copy of any **previously due** Federal Income Tax Return (or transcript) that had not been filed with the IRS as of the date of commencement of the case, for any tax year ending in the three years before the case began.
- 3. Copies of any amendments to Federal Returns under 1 & 2 above;



Tax Returns in Chapter 13 Cases pursuant to 11 USC § 521(f)(4)

- **In a Chapter 13 Case**, at the request of the Court, UST or Party in Interest, the debtor must file a Statement of Debtor's Income & Expenditures **during the tax year most recently concluded**:
 1. Statements due on the date that is 90 days after the tax year's end, or one year after case commencement if plan is not confirmed before such later date;
 2. Annually after plan is confirmed and until the case is closed (the filing of the tax returns should be no later than 45 days before the anniversary of plan confirmation).



Sequence of Post Petition Tax Request Process

- Creditor or Interested Party files a Request for Copy of Debtor's Tax Information
 - Local Form G.1/G.2
 - 13 day objection deadline set
- If granted, Debtor files Tax Documents (private event) with the Court upon filing with the taxing authority.



Debtor's Failure to File Tax Documents

■ May result in:

- Dismissal of the case by the court upon Motion, unless debtor demonstrates failure to comply was due to circumstances beyond debtor's control, or
- Delay of entry of discharge upon Motion. Motion to Delay Discharge will prevent entry of discharge until motion is resolved. (Rule 4004(c)(1)(k))



Copy/Inspection of Tax Documents

- In order to copy or inspect tax documents filed with the court, a Party in Interest must first file a **Motion for Access to Tax Documents**. The Motion shall include:
 - ☐ Which specific tax documents
 - ☐ Select the method by which tax information will be transmitted to requestor
 - ☐ Statement demonstrating a need for the information, and that it cannot be obtained from any other source
- Local Forms H.1/H.2
- Motion receives a 13 day objection deadline



Copy/Inspection of Tax Documents

■ If **Motion for Access is Granted:**

- ☐ Court will transmit information according to the method designated in the Motion for Access.
 - Regular mail or In person
- ☐ Applicable miscellaneous copying fee applies



New Electronic Filing Events

- Certificate of Service of Tax Docs to Requestor –
(Available for use by Debtors to document that they have satisfied their pre-petition tax responsibilities under § 521)
- Request for Copy of Debtor's Tax Information
(Attach Local Form G.1/G.2)
- Tax Documents
- Motion to Delay Discharge (Available to party in interest if Debtor fails to file tax documents)
- Motion for Access to Tax Information (Attach Local Form H.1/H.2)



New Local Forms

- Request for Debtor to File Post Petition Tax Information (**Local Forms G.1 and G.2**)
 - ☐ Local Form G.1 to be used by party represented by an attorney
 - ☐ Local Form G.2 to be used by a party in interest not represented by counsel
- Both forms contain Penalty of Perjury Language



New Local Forms con't

- Motion by Party in Interest for Access to Tax Information **(Local Forms H.1 and H.2)**
 - ☐ Local Form H.1 to be used by party represented by an attorney
 - ☐ Local Form H.2 to be used by a party in interest not represented by counsel
 - ☐ Filer must specify tax documents, and include method of transmission desired (mail or in person only)
- Both forms contain Penalty of Perjury Language



REAFFIRMATION AGREEMENTS

Federal Code, Interim Federal Rules and Interim Local Rule Changes

- Federal Code – 11 U.S.C. § 524
- Interim Federal Rules: 4004 and 4008
- Interim Local Rules 4008-1



Reaffirmation Agreement Forms

- **Cases filed on or after 10/17/05 -**
Official Form B 240 (10/05)
- **Cases filed before 10/17/05 –**
R.I. Bankr. Form U

Review of Reaffirmation Agreements

For cases filed on or after 10/17/05:

**REAFFIRMATION AGREEMENTS
INVOLVING REAL ESTATE AND/OR
CREDIT UNIONS** do not require court
approval, even when the debtor is pro se.





Review of Reaffirmation Agreements

(not involving real estate or credit unions)

For cases filed on or after 10/17/05:

- The Court will review the reaffirmation agreement to determine **if a presumption of undue hardship arises** and whether the debtor has filed a **rebuttal**.
- A presumption of undue hardship arises if, the stated monthly income, minus monthly expenses, is less than the amount of the monthly payment on the Reaffirmation Agreement.
- Where the debtor is represented by an attorney, the Court may approve the Reaffirmation Agreement without a hearing.



Review of Reaffirmation Agreements

(not involving real estate or credit unions)

- In all instances where the reaffirmation agreement is filed without an attorney's certification, the agreement will be treated as having been filed Pro Se.
- If filed Pro Se, Part E of the Reaffirmation Agreement entitled, "Motion For Approval" must be completed.
- A hearing will be held on all Pro Se Reaffirmation Agreements.



DEFECTIVE Reaffirmation Agreements

- A Reaffirmation Agreement will be deemed **defective**, and will be stricken from the record if:
 - Official Form B 240 (rev. 10/05) is not used for cases filed ***on or after*** 10/17/05, or
 - The debtor or creditor fails to sign any of the required parts of the reaffirmation agreement or to adequately complete the document.



Reaffirmation Agreement and Discharge

- Whenever a Reaffirmation Agreement is filed where the presumption of undue hardship has arisen, the discharge will not enter in the case until the Court either approves or disapproves the Reaffirmation Agreement.



Summary of New Chapter 13 Filing Requirements

In addition to the previously discussed new filing requirements:

- Statement of Currently Monthly Income & Disposable Income Calculation (Form 22C)
- FMC (Official Form 23) -- *Due on or before* the date of the last payment under the plan.
- Proof that Domestic Support Obligations are current (if any)
 - ☐ (1) prior to confirmation and
 - ☐ (2) prior to discharge being entered
- Limitations on discharge for duplicate filers



Always Check Previous Filing History

- Under the new law, a Chapter 13 debtor **may NOT receive a discharge** if he/she has received one in a **previous chapter 13 filing in the last two (2) years** or in **any other chapter during the past four (4) years**.
- The relevant look back period is: **date of prior case filing where discharge was granted to the date of the current order for relief**.
See, § 1328(f).
- Search U.S. Party Case Index for any previous bankruptcies (Case Information/US Party Case Index located under the PACER link).



Clerk's Review of Previous Filings

- If the debtor has had a previous bankruptcy and received a discharge within the time frame specified under §1328(f), the clerk will make a notation in the docket that debtor is a 'duplicate filer', and
- The Clerk will issue a ***“Notice of Ineligibility to Receive Discharge”***. The case will be flagged to prevent the entry of discharge.



Revised Chapter 13 Local Forms

- **Interim Local Form V** - Chapter 13
Agreement between debtor and counsel
- **Interim Local Form W** – Chapter 13 Plan
- **Interim Local Form X** – Chapter 13
Confirmation Order



Domestic Support Obligations (DSO)

- If the Debtor owes or pays DSO's, the Debtor must certify to the Chapter 13 Trustee **prior to confirmation of the plan and prior to final payment under the plan**, that all DSO's are current.
- The Chapter 13 Trustee will inform the Court whether or not these certifications have been made.
- **If the Debtor fails to so certify**, the Court will issue a **Notice of Intent to Close Case without Discharge**, and the Debtor will be given 15 days to cure this default before the case is closed.



DIRECT APPEALS TO FIRST CIRCUIT COURT OF APPEALS 28 U.S.C. §158(d)(2)

- **Statutory References:** 28 U.S.C. § 158(d); Interim Federal Rules 8001(f) and 8003(d).
- A direct appeal from a bankruptcy court order, judgment or decree to the First Circuit Court of Appeals can come about in one of three ways:



DIRECT APPEALS con't

■ The Court on its own initiative:

- The Court must find that **one of the three reasons** listed in Section 158(d)(2)(A) exists:
 - (a) The judgment/order involves a **Question of law where there is no controlling decision** from Court of Appeals or U.S. Supreme Court and it involves a matter of public importance;
 - (b) The judgment/order involves a **question of law requiring the resolution of conflicting decisions**; or
 - (c) An immediate appeal from the judgment/order may **materially advance the progress of the case** or proceeding.
- A 13 day Response deadline will be set to file “a short supplementary statement” if parties so desire.



DIRECT APPEALS con't

- **On Motion of one or more parties— but fewer than all of the Appellants and Appellees**
 - **The Appellee or Appellant can file a “Petition “Requesting Direct Appeal” containing:**
 - (a) facts necessary to understand the question presented;
 - (b) the question itself;
 - (c)the relief sought;
 - (d) the reason why the direct appeal should be allowed including why one of the three circumstances specified in the statute exists; and
 - (e) attach a copy of the order/judgment and any related opinion.
 - **A 13 day response deadline will be set.**



DIRECT APPEALS con't

- **Certification by All Appellants and All Appellees Acting Jointly– Official Form 24**
 - All of the parties to the appeal can decided to certify the matter to the Court of Appeals by completing and filing Official Form 24
- New CM/ECF Event: **“Certification of Direct Appeal to Court of Appeals.”** The form “may” be accompanied with a short statement setting forth the basis for the certification.



DIRECT APPEALS con't

- The Court will then transmit the Certification to the Court of Appeals.
- This Certification can only be accepted for docketing **AFTER** a notice of appeal or motion for leave to appeal has been filed. If the certification is filed before the appeal, it will be stricken from the docket. See Interim Federal Rule 8001(f)(1)



DIRECT APPEALS con't

■ Timing & Filing:

- ☐ Under any of the three scenarios, a Certification can only be filed in the Bankruptcy Court until the appeal has been transmitted and “docketed” in either the BAP or District Court pursuant to Fed. R. Bankr. P. 8007(b).
- ☐ If the certification or Petition Requesting Direct Appeal is filed after that time, it will be referred to the BAP or the District Court.
- ☐ A certification made by the bankruptcy court *sua sponte* or upon the request of all parties must be done within 60 days of the entry of the order being appealed.